



U.S. Department of Justice

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March 15, 2012

CONFIDENTIAL SETTLEMENT COMMUNICATION

BY ELECTRONIC MAIL

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Re: Claims Against NewPage Wisconsin Systems, Inc. in
United States and the State of Wisconsin v. NCR Corp., et al.,
Case No. 10-C-910 (E.D. Wis.)

Counsel:

The United States and the State of Wisconsin have filed claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") against NewPage Wisconsin Systems, Inc. ("NewPage") in the above-captioned lawsuit pending before the U.S. District Court for the Eastern District of Wisconsin (the "CERCLA Enforcement Action"). The United States and the State brought the CERCLA Enforcement Action against NewPage and certain other defendants relating to environmental remediation and restoration work necessitated by widespread polychlorinated

biphenyl ("PCB") contamination in sediments at the Lower Fox River and Green Bay Superfund Site in northeastern Wisconsin (the "Fox River Site"). The costs of that remediation and restoration work have been estimated at up to \$1.5 billion. The Plaintiffs' complaint alleges that NewPage and the other defendants are jointly and severally liable to the United States and the State for costs and damages associated with the Fox River Site. NewPage is alleged to be liable under CERCLA as a successor by merger to a corporate predecessor that contributed to the PCB contamination at the Site through paper mill discharges to the Lower Fox River. As you may know, the judge in the CERCLA Enforcement Action recently granted the Plaintiffs' motion for a declaration that the United States' and the State's claims against NewPage fall within the "police and regulatory power" exception to the automatic stay.

Shortly after the CERCLA Enforcement Action was filed, the United States and the State proposed to settle their Fox River Site claims against NewPage in exchange for NewPage's payment of \$1,157,253.¹ We are writing to renew a proposal to settle with NewPage on similar terms, with the recognition that some special provisions would need to be made in light of the Chapter 11 bankruptcy petition filed by NewPage and certain affiliated debtors (the "Debtors"). More specifically, we propose the following basic terms:

- The United States and the State would have allowed general unsecured claims totaling \$1,157,253, with distributions on such claims to be made in accordance with the Debtors' Plan of Reorganization.
- If the Debtors recover insurance proceeds on account of the Fox River Site in excess of the Debtors' costs of pursuing such insurance proceeds, the Debtors may retain 50% of such excess insurance proceeds on account of the Fox River Site, and the Debtors shall pay 50% of such excess insurance proceeds on account of the Fox River Site to the United States and the State. Such payments would be

¹ The rationale for that settlement demand was explained in a series of telephone calls and in a December 15, 2010 e-mail message from Jeffery Spector (of the U.S. Department of Justice) to Daniel Murray (Counsel for NewPage). A copy of that e-mail message is attached to this letter. The calculus used to derive that settlement figure paralleled the approach used for other CERCLA *de minimis* settlements concerning the Site, which were approved by the District Court and subsequently affirmed by the Court of Appeals. See *United States v. George A. Whiting Paper Co., Inc.*, 644 F.3d 368 (7th Cir. 2011).

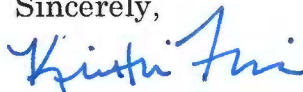
in addition to the above-described distributions under the Plan of Reorganization.

- The settlement terms, including the non-monetary terms, would be memorialized in a standard form of settlement agreement used by the U.S. Department of Justice for resolution of CERCLA claims in bankruptcy matters.²

We have discussed these terms with counsel for the State of Wisconsin and we are conveying this as a joint proposal made on behalf of both the United States and the State. Both the United States and the State of Wisconsin have filed Proofs of Claim against NewPage for the liabilities associated with the CERCLA Enforcement Action.

Please contact me at your earliest convenience if NewPage is interested in pursuing a settlement of Fox River Site claims on the terms outlined above.

Sincerely,



Kristin M. Furrie
Trial Attorney

Attachments

² A recent settlement agreement example is attached to this letter.